Richard Minſhull Eſq; Appellant.

Peter Minſhull,
Samuel Sherrard,
Thomas Penlington, and
Benjamin Penlington
} Reſpondents.

The Reſpondents CASE.

John Minſhull, younger Brother of Sir *Richard Minſhull* the Appellants Grandfather, was ſeiſed in Fee of a Meſſuage and Lands, called *College Fields*, and other Lands in *Dorrington Com' Salop*, value 42 l. *per Annum*, and having been under Troubles, and confined in Priſon about the Year 1676. and Reſpondent *Peter* having been very ſerviceable to him in his Troubles, and in procuring his Enlargement, he often promiſed and declared he would make him his Heir, and leave him his Eſtate for his Service, being near of Kin to him, *viz.* eldeſt Son of *Peter Minſhull*, who was eldeſt Son of *Edward Minſhull*, another Brother of the ſaid *John Minſhull*, and after his Enlargement, *viz.*

23 & 24 *March* 1676. *John Minſhull* by his Deeds of Leaſe and Releaſe ſettled the Premiſes on Reſpondent *Peter* and his Heirs, To the uſe of the ſaid *John* for Life, and after to Reſpondent *Peter*, and the Heirs Males of his Body; and in default of ſuch Iſſue, To the uſe of *Francis Minſhull* the Appellants younger Brother, and the Heirs Males of his Body; and for want of ſuch Iſſue, To the right Heirs of Reſpondent *Peter* for ever, and charged the Premiſes with 200 l. to be paid to the ſaid *Francis Minſhull* within ſix Months after he ſhould attain his Age of 24 years, if Reſpondent *Peter* ſhould not be evicted out of the Premiſes.

The ſaid *John Minſhull* alſo made his Will in writing, and Reſpondent *Peter* ſole Executor, and died about *Novemb.* 1678. after whoſe death Reſpondent *Peter* proved it in the Conſiſtory Court at *Lichfield*.

18 *Octob.* 1679. Reſpondent *Peter* leaſed *Clark's Riddings*, part of the Premiſes, to Reſpondent *Thomas Penlington* for 99 Years, determinable on the Lives of the ſaid Reſpondent and his Father and Mother, for 30 l. Fine, and 2 l. *per Annum* Rent.

21 & 22 *Dec.* 1683. Reſpondent *Peter* by Leaſe and Releaſe mortgaged the whole Premiſes to *Roger Griffiths* (who was a Defendant in the Suit in the *Exchequer*, but died before hearing) for 400 l. *bona fide* lent, without any manner of fraud or notice of any Title the Appellant claimed; and Reſpondent *Peter* failing to pay his Intereſt, the ſaid *Roger Griffiths* in *May* 1687. entred on the Premiſes, and he and his Executors have received the Profits ever ſince; and to Corroborate the Mortgage, the Reſpondent *Peter* in *Hillary* Term 1692. levied a Fine of the Premiſes to *Griffiths* and his Heirs, and the Deeds of Settlement made by *John Minſhull* to Reſpondent *Peter*, were by him depoſited into the hands of Reſpondent *Sherrard*, who was intruſted by Reſpondent *Peter* and the ſaid *Griffiths* to keep them.

Trial 1688. The Appellant brought his Ejectment for the Premiſes, which came to Trial at *Salop* Lent-Aſſizes 1688. and the Deeds of Settlement made by *John Minſhull* to Reſpondent *Peter* were then produced, and proved to be well executed, and the Deeds were read, and upon full Evidence the Appellant was Nonſuit.

This reſted till *Trinity* Term 1696. and then the Appellant Exhibited his Engliſh Bill in the *Exchequer* (againſt the ſaid Reſpondents and the ſaid *Griffiths*) as Heir at Law to *John Minſhull*, to be relieved againſt the Deeds of Settlement made by *John Minſhull* to Reſpondent *Peter*, and againſt the ſaid Will, ſuggeſting they were gained by Surprize, and when *John Minſhull* was not *compos mentis*, and were antedated.

Whereto Reſpondent *Peter* by Anſwer inſiſted upon his Title under the ſaid Deeds of Settlement, and denied the indirect Practices.

Reſpondent *Thomas Penlington* inſiſted on his Leaſe of *Clarks Riddings* under Reſpondent *Peter*.

Reſpondent *Griffiths* inſiſted upon his Mortgage for 400 l. *bona fide*, lent without notice of any prior Title, and that upon payment of his Principal, Intereſt, and Charges, he was ready to reconvey the Premiſes as the Court ſhould direct.

Reſpondent *Sherrard* claimed no Title to the Premiſes.

The ſaid Cauſe being at Iſſue, and Witneſſes examined on both ſides, as well to the Credit of each others Witneſſes, as to the Merits,

24 *Febr.* 1697. The Court of *Exchequer* upon hearing the ſaid Cauſe, and reading the Depoſitions taken therein, Ordered that the Appellants Bill ſhould be retained till *Michaelmas* Term following, and in the mean time the Appellant was at Liberty to proceed in his Action at Law (for the Affirmance of his Title to the Premiſes) notwithſtanding the Injunction formerly granted by the Court in the Cauſe.

Note. The Appellant had then an Ejectment depending in the *Kings Bench* wherein the Reſpondents had joyned Iſſue, but the Appellant did not think fit to proceed to Trial therein, and thereupon

24 *Nov.* 1698. The Court of *Exchequer* on hearing Counſel on both ſides by conſent, Ordered that the Appellant ſhould try his Title at the next Aſſizes for the County of *Salop*, and no Excuſe was to be afterwards received for not going to Trial.

5 *Dec.* 1699. The Cauſe being continued in the Paper, and no Trial had, and the ſaid *Griffiths* being then dead, the Court of *Exchequer* Decreed the Reſpondents ſhould be diſmiſſed off and from the Appellants ſaid Bill, and the Matters therein contained, as by the Bill, Anſwers, Orders and Proceedings remaining of Record in the ſaid Court may appear.

Which Decree the Reſpondents are adviſed is according to the Rules of Equity, and hope the ſame ſhall be Affirmed, for that the Appellant claims only as Heir at Law to the ſaid *John Minſhull*, and the Reſpondents claim by Virtue of and under the ſaid Deeds of Leaſe and Releaſe in 1676. the Validity whereof is purely determinable at the Common Law, and have been eſtabliſhed already at one Trial by a Nonſuit on full Evidence; And the Appellant refuſed to proceed to another Trial, after almoſt Two years time given him by the Court of *Exchequer*, And for that the Decree doth not hinder him from proceeding at Law when he pleaſes.

Con. Phipps.